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ation of competitive conditions where these have been destroyed by unfair tactics. While the author may be right in his opinion as to the permanence of industrial monopoly—he is not alone, of course, in his belief—this is a matter upon which it is unwise to adopt a cock-sure attitude, particularly in view of the many opposing considerations. It is generally the case that the more deeply one delves into a controverted question, the more unwilling he becomes to enter into the hazardous realm of prediction.

ELIOT JONES.

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Some Legal Phases of Corporate Financing, Reorganization and Regulation. By FRANCIS LYNDE STETSON, JAMES BYRNE, PAUL D. CRAVATH, GEORGE W. WICKERSHAM, GILBERT H. MONTAGUE, GEORGE S. COLEMAN, and WILLIAM D. GUTHRIE. (New York: The Macmillan Company. 1917. Pp. ix, 389. \$2.75.)

The book is a series of essays by legal authorities, obviously written for younger members of the bar. As such it deals with particular problems in the peculiarly narrow and intensive manner of legal procedure. This is its great merit, but it is also the reason why the broader economic aspects of the problems treated are either totally disregarded or else disposed of with only a few phrases. Yet within their field of legal literature most of these essays are remarkably comprehensive; in fact, several of them, notably Cravath's on reorganizations, are certainly unrivaled in the sphere of legal finance.

The chapters may be conveniently divided into two sections. The first covers certain topics of corporation finance and the second certain questions arising out of the public regulation of corporations. They are of unequal merit, the essays of the earlier part being on the whole superior and more carefully prepared.

The book opens with Stetson's Preparation of Corporate Bonds, Mortgages, Collateral Trust and Debenture Indentures. Unquestionably so much comprehensive information on this topic cannot be found anywhere else. It deals with the structure of mortgages and similar instruments of essentially large corporations. It has the somewhat uncritical point of view of one who would justify, in all respects, the present forms. In that sense it is unsympathetic with that movement which would simplify and shorten corporate instruments and rely more on an established body of judicial and

public opinion than on legal phraseology. The old New York and Erie mortgage of 1847, short and unscientific to the thinking of a Wall Street lawyer, has stood the test of several reorganizations and the bonds issued under it are probably as sound as any corporate obligation in existence. The strength of a mortgage or debenture is property, earning power, and that force of judicial and public opinion which insists on a corporate morality independent of and above legal quibbles.

Byrne's essay on the Foreclosure of Railway Mortgages is a very keen yet comprehensive summary of current practice. It contains the best short statement of that knotty problem, the treatment of unsecured claims, which the present reviewer has ever seen. It is best because it sees *Fosdick vs. Schall* in true perspective, neither as a "bugbear" nor as "fundamental law."

Were I to single out the essay which most impresses me as that of a master it would be Cravath on The Reorganization of Corporations. There is no more perplexing field in the whole range of corporation finance, and the author of this essay nowhere shows himself more a keen student of the subject than when he naïvely comments, "Plans of reorganization are rarely strictly logical." The trouble with most writers on this subject is that they either despair of seeing order—their accounts degenerating into a mere patchwork of ephemeral and unrelated cases—or else they seek to become "general" with the result that their generalizations are so amateurishly superficial as to be utterly worthless. This essay does neither. It shows a thorough and painstaking working over of the written material amplified in addition by the writer's acknowledged practical familiarity. It is well written according to a clearly defined method of presentation, not a mere unorganized patchwork of notes with which some "busy practical men" insult their audiences. Penetrating and comprehensive as is the essay it has nevertheless the bias of the legal profession. The author does not give the economic and social (and often personal) elements that underlie any reorganization their proper perspective. Moreover he is apt to bring into bold relief transient and perhaps ephemeral decisions as if they were final. He is quite as worried over the Boyd case as was the late A. H. Jolie over the Monon case when the latter delivered the now classic lectures on reorganization before the Harvard Business School.

Mr. Wickersham's essay on the Sherman Anti-Trust Law is somewhat of a disappointment, in the light of the writer's sin-

gularly wide familiarity with its workings both from within and without. While all that is said is true enough (and has been said many times before) it contains no enlightening insight into the subtle current of judicial opinion, swerving in one direction and then another, which if understood aright helps to predict the future. For illustration, Wickersham suggests, as everyone knows, the fundamental and vitally important difference between the majority and minority opinions in the *Harvester* case, but a study of the writer's survey of the cases, from *Knight* to *Nash*, gives us no suggestions as to how the court might reason in this particular issue. Yet this very point is now the most important issue within the field. Furthermore, like many lawyers, he is blind to the economic and social background which explains, much better than legal subterfuges, the reason why the minority opinion in the *Knight* case later became law and why the spirit of Holmes's dissenting opinion in the *Northern Securities* case has had such an abiding influence.

Montague's discussion of the Federal Trade Commission and the Clayton act leaves a very indecisive impression. The application of these acts is of the future and there is little precedent from which to construct theories of established policies.

Coleman's essay entitled *The Public Service Commission* is superficial and scrappy. His laudatory attitude toward the ability of the average commissioner has blinded his critical sense; and his eulogy of the personnel of the New York First District Commission is almost humorous. Guthrie's essay on the same subject, on the other hand, is a refreshing criticism of the mere bureaucratic authority of commissions. He deplores, as all students of the subject must, the utter lack of technical or special training usually at the command of appointees to public service bodies. The root of the evil is, of course, politics and political debts. Into the hands of a "lame duck" senator or a country lawyer without a practice the transportation of the country is cast by the law, bound hand and foot. Every year, in the real interest of public welfare, the number of commissions is increased, with added burden to the public treasury only to degenerate into snug harbors for political refugees.

ARTHUR S. DEWING.

NEW BOOKS

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